SUPREME COURT, U. S.

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JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1969.

No. 612

CLARESA F. ARMSTRONG BROWN,
Petitioner,

vs.

COMMERCIAL NATIONAL BANK OF PEORIA,
AS TRUSTEE, ET AL.,
Respondents.

PETITION FOR REHEARING OF DENIAL OF PETITION FOR CERTIORARI.

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THE GUNTHORP-WARREN PRINTING COMPANY, CHICAGO

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To the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

This case presents the question of whether due process of law is denied a litigant when five of the eleven Judges who decided the case in the state courts were directors of banks, one of them was Chairman of the Board of a bank, and the decision inaugurated a novel rule of law favorable to banks. This Court has declared that "A fair trial in a fair tribunal is a basic requirement of due process." (*In re Murchison;* 1955, 349 U. S. 133, 136)

Since this Court held the Petition for Certiorari under consideration for many weeks and, contemporaneously with

its denial, the Chief Justice of the United States appointed a committee of Judges to formulate rules of Judicial Ethics, we assume that there is some connection between these two events.

We would fail in our duty if we did not call this Court's attention to the demonstrated futility, on this problem, of such a committee. Six years ago the Judicial Conference of the United States, with the Chief Justice of the United States presiding, laid down the rule that no Judge "shall serve in the capacity of an officer, director or employee of a corporation organized for profit." That rule has not been complied with. It had no sanctions. Only a decision of this court in a proper case can end this improper practice. *Who's Who in America* indicates that at least one of the seven judges presently appointed by the Chief Justice of this Court as a Committeeman on Judicial Ethics has violated this rule of the Judicial Conference of 1963. The recent debates in the United States Senate disclosed another violation of that rule. Other violations could be enumerated. The denial of certiorari in this case can be considered by the new Committee on Judicial Ethics as an indication by this Court that it disagrees with the rule adopted in 1963 by the Judicial Conference of the United States.

The developments in Illinois since the filing of the petition herein are directly pertinent. In 1967 the Legislature of Illinois passed an Act forbidding any judge to serve "as an officer or director of any business corporation or other for profit corporation." (Ill. Rev. Stat. 1967, Ch. 37, Sec. 160.11) In 1969 certain Illinois Judges who were directors of banks made an all-out effort to repeal that law. (House Bill 1488 introduced by seven Representatives and Senate Bill 659 introduced by five Senators) Senate Bill 659 passed the Senate but was recalled by its sponsors and

tabled the day after the Illinois judicial scandal broke. (Vol. 22 Illinois Legislative Digest, 239, 924) That scandal resulted in the forced resignation of two justices of the Supreme Court of Illinois for accepting from litigants gifts of bank stock. Both of these judges were directors of banks. One of them had written the opinion in the case at bar.

On September 9, 1969, following these forced resignations, the Chief Justice of the Supreme Court of Illinois appointed a committee of the bar which was directed to report *as soon as practicable* on "standards regarding non-judicial activities of Judges." This Committee was appointed by a chief justice of the Supreme Court of Illinois who had been for many years, while serving on the court, Chairman of the Board of a bank and who is still serving as a director of that bank.

On November 26, 1969 the Supreme Court of Illinois handed down a decision holding that the Illinois law of 1967 forbidding judges to act as directors of for profit corporations was unconstitutional and void. The supreme court declared: "The General Assembly is now without authority to enact standards of judicial ethics." (*Cusack* v. *Howlett*, 1969, *Not yet reported*) It held that the General Assembly could not even investigate the conduct of Judges.

On December 4, 1969, the Committee, appointed by the Chief Justice of the Supreme Court of Illinois, filed its report. It stated: "The rule of law in a free society cannot long survive without public trust in the competence, integrity and impartiality of the judiciary. Public confidence has been shaken by recent events on the national and state level and *prompt* efforts must be exerted to restore and increase a deserved trust in the rule of law." [Emphasis supplied] The Committee recommended that the Supreme Court of Illinois adopt this rule: "A judge shall

not assume an active part in the management of any business or serve as an officer or director of any for profit corporation."

And so the wheel has come full circle.

Can the Committee on Judicial Ethics recently appointed by this Court recommend any other rule than that adopted by the Judicial Conference of the United States in 1963, which was recently applied in the Senate of the United States, and which has now been repeated by the General Assembly of Illinois and by the Judicial Ethics Committee appointed by the Supreme Court of Illinois? Any other report of this Court's Committee on Judicial Ethics would only enhance the crisis of public distrust in the courts. (And see *Chandler* v. *Judicial Council*, 1966, 382 U. S. 1003)

Why palter with this crisis?

What good is a rule if it can not be enforced?

Is a Committee a proper forum to rule on a constitutional question? Should a constitutional argument be heard *ex parte*?

Why should this Court refuse to hear argument on a case directly involving this crucial national issue?

Petitioner prays that this Court grant rehearing of its order denying certiorari in this case entered on December 8, 1969, vacate that order, grant the petition and review the judgment and opinion below.

WILLARD L. KING,
135 South La Salle Street,
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Attorney for Petitioner.

December 23, 1969.

Certificate of Counsel.

As counsel for the Petitioner I hereby certify that this petition for rehearing is presented in good faith and not for delay and is restricted to the grounds specified in rule 58(2).

Willard L. King.